IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION NO.16035 OF 1993
DECIDED ON : 05.12.2007

Ashok Kumar, son of Sh.Bhim sen, Diesel Pump Attendant, Punjab Roadways Depot, Amritsar-I, Resident of Gali and Katra Parzza Amritsar.

.....Petitioner

Versus

1. The State of Punjab through the Secretary Transport Department, Punjab, at Chandigarh.

2. The Director State Transport Punjab at Chandigarh.

3. The General Manager, Punjab Roadways Depot, Amritsar-I

.....Respondents.

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CORAM: HON'BLE MR.JUSTICE SHAM SUNDER.

Present: Mr.Ravi Sharma, Adv., for the petitioner.

Mr.S.S.Sahu, AAG, Punjab, for the respondents.

JUDGMENT:

The petitioner is an ex-serviceman from the Indian Air Force. He was duly selected in the Indian Air Force on 02.01.1964. On 31.01.1979, he was released as corporal, from the Indian Air Force. Thereafter, the petitioner was duly selected and appointed as Diesel Pump Attendant and joined his duties at Amritsar, under respondent No.3, on 01.02.1982, and retired from service on 29.02.2004. It was stated that as per Rule 4 of the Punjab Government National Emergency (Concession), Rules 1965, the petitioner was required to be granted the benefit with

regard to increments, seniority and pension, for the period, he served the Indian Air Force, during the first emergency. Though, the rules, referred to above, cast statutory obligation, on the respondents, to grant the petitioner, the benefit of military service, rendered after 02.01.1964 yet his claim for seniority was kept pending after counting only a part of his service, towards increments. When the grievance of the petitioner, was not redressed, he filed the instant Civil Writ Petition, wherein interim order dated 28.04.2006, was passed by this Court, that he should make a representation to the respondents. Thereafter, the petitioner made a representation, to the respondents, and the order dated 06.06.2006, was passed, whereby, he was declined the benefit of seniority, for the period of military service. Thereafter, the Writ petition was amended, wherein, the order dated 06.06.2006, was challenged, as illegal, void, unconstitutional and inoperative against the rights of the petitioner. Accordingly, a prayer was made that a writ in the nature of mandamus, be issued to the respondents, to grant him the full benefit of his military service, towards increments, seniority, promotion, step-up increments etc. Further prayer for the issuance of a Writ of Certiorari, quashing the order dated 06.06.2006 (annexure P9) was also made.

The respondents, in their written statement, admitted that the petitioner served in the Indian Air force from 02.01.1964 to 31.01.1979. It was also admitted that he was appointed as Diesel Pump Attendant, and joined, as such, under respondent No.3. The national emergency was proclaimed in the Country twice i.e. for the first time from 06.10.1962 to 09.01.1968, and for the second time, from 03.12.1971 to 03.07.1977. It was admitted that the petitioner has since retired from service. It was further stated that relying

upon Jang Singh and others versus State of Punjab and others 1997 (3) RSJ Page 464, a Full Bench decision of this Court, the petitioner was granted the benefit of increments, for the military service, for the period of first emergency, from 02.01.1964 to 09.01.1968. It was further stated that, as per the judgment, referred to above, the petitioner was not entitled to the benefit of seniority, for the aforesaid period, and, as such, the same was declined vide order dated 06.06.2006. It was further stated that the order dated 06.06.2006 (annexure P9) was legal, valid and operative against the rights of the petitioner. The remaining averments were denied being wrong.

I have heard learned Counsel for the parties and have gone through the record of the case, carefully.

The Counsel for the petitioner, contended that the petitioner limits his claim only to the extent of grant of seniority, and the consequential benefits, flowing, on account of the fixation thereof. In the order dated 06.06.2006 (annexure P9), It was recorded that the petitioner had already been granted the benefit of military service from 02.01.1964 to 09.01.1968 for increments. He was, however, denied the benefit of seniority, vide this order, on the basis of **Jang Singh's case (supra) .** It is to be determined, whether the aforesaid period of military service, for the grant of seniority to the petitioner, and the consequential benefits, could be taken into consideration or not. In exercise of the powers, conferred by the Constitution of India, the Governor of Punjab, framed the Rules, called as Punjab Government National Emergency (Concession) Rules, 1965.

5. “Rule 4 of the Rules, is extracted as under:-

“4. Increment, seniority and pension:-

Period of Military service, shall count for increments, seniority and

pension as under:-

i) INCREMENT: The period spent by a person in military service, after attaining the minimum age, prescribed for appointment to any service or post, to which he is appointed shall count for increments, where no such minimum age is prescribed the minimum age shall be as laid down in rules 3.9, 3.10 and 3.11 of the Punjab Civil Services Rules, Volume II. This concession shall, however, be admissible only on first appointment.

ii) SENIORITY:- The period of military service mentioned in Clause (i) shall be taken into consideration for the purpose of determining the seniority of a person, who has rendered military service."

6. The principle of law, laid down, in **Jang Singh and others' Case (supra),** was to the effect that Rule 2 of the Rules ibid, clearly indicates that the military service will be only service, which had been rendered by such officers/officials, during the proclamation of emergency, and not any other service, rendered by them. The principle of law, laid down, in the aforesaid authority, was to the effect, that the benefit of increments, seniority, promotion and pension, was to be granted, for the limited period of service, rendered during the proclamation of Ist national emergency. No principle of law, was laid down, in **Jang Singh and others' Case (supra),** that an ex-serviceman who had rendered service, during the proclamation of Ist national emergency, was not entitled to the benefit of seniority. In the peculiar circumstances of that case, the benefit of military service for seniority, was not granted, to the petitioners, as they had already retired from service. In the instant case, the petitioner filed the Writ Petition in 1993, when he was still in service. If, on account of delay, in disposal of the Writ Petition, he retired from

service, on 29.02.2004, he could not be denied the relief, which became legally admissible to him, immediately on joining civil service, after his release from Air Force. When his grievance was not redressed, by the respondents, despite representations, he was forced to file the instant Writ Petition. Under these circumstances, the respondents were not correct, in denying the benefit of seniority, to the petitioner, for the period of service, rendered by him, during the proclamation of Ist national emergency. The order dated 06.06.2006, denying the benefit of seniority, to the petitioner, for the period of service, rendered by him, during the proclamation of Ist emergency is, therefore, illegal, being in violation of Rule 4 of the Rules ibid, and the principle of law, laid down in **Jang Singh and others' Case (supra).**

7. For the reasons, recorded hereinbefore, the petition is accepted, with no order as to costs, and the order dated 06.06.2006 (annexure P9) is quashed, being illegal. The respondents are directed to grant the benefit of seniority, to the petitioner, by counting the period of military service, rendered by him, from 02.01.1964 to 09.01.1968, during the proclamation of Ist national emergency, within a period of three months, from the date of receipt of a certified copy of the Judgment, and if he is found entitled to any monetary benefit, on account of fixation of such seniority, the same be released to him, within a period of two months thereafter.

December 05 , 2007 **(Sham Sundar)**
mamta m **Judge**